



POLICE DEPARTMENT

January 20, 2015

MEMORANDUM FOR: Police Commissioner

Re: Sergeant Michelle Pacheco  
Tax Registry No. 927311  
110 Precinct  
Disciplinary Case No. 2014-11418

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The above-named member of the Department appeared before me on December 5, 2014, charged with the following:

1. Said Sergeant Michelle Pacheco, assigned to the 110th Precinct, on or about October 17, 2013 while on-duty, engaged in conduct prejudicial to the good order, efficiency, and discipline of the Department, to wit: after responding as the patrol supervisor to a "wellness check" of an elderly male, said Sergeant failed to provide police assistance. P.G. 203-10, Page 1, Paragraph 5 PROHIBITED CONDUCT PG 202-17, Page 1, Paragraphs 2, 10 & 12 PATROL SUPERVISOR

The Department was represented by Vivian Joo, Esq., Department Advocate's Office, and Respondent was represented by John D. Alessandro, Esq. Respondent, through her counsel, entered a plea of Not Guilty to the subject charges. The Department Advocate called Officer Seung Ji Huh and Sergeant Steven Maddrey as witnesses and entered into evidence the recorded CCRB interview of Police Officer John Wingate. Respondent testified on his own behalf. A stenographic transcript of the trial record has been prepared and is available for the Police Commissioner's review.

After evaluating the testimony and evidence presented at the hearing, and assessing the credibility of the witnesses and hearsay declarations, this tribunal finds that

the preponderance of the credible evidence did established that Respondent engaged in the charged misconduct.

### FINDINGS AND ANALYSIS

The following are undisputed facts. At approximately 2224 hours on October 10, 2013, Police Officers John Wingate and Seung Ji Huh responded to a radio run for a wellness check at [REDACTED]. Upon arrival, they met with Person A, the building resident who had called 911. Person A explained that he was worried about his elderly neighbor, Person B, because he had not seen him in a few days and he heard the sound of running water in his apartment. Person A informed the officers that Person B lived alone and that although he had relatives in China, he had no relatives in the area. When the officers knocked on Person B door and received no response, they attempted to obtain a key. The superintendent, however, was abroad and neither the building's board members nor the substitute superintendent had a copy. One officer investigated whether there was a point of entry from a fire escape or window, but found none. Another officer inspected the apartment below Person B's residence to determine whether there was a visible leak due to running water. Wingate ran an Omni check and an Aided check to ascertain whether Person B had been arrested or taken to the hospital. Both were negative. Upon concluding their investigation, the officers called the patrol supervisor, Respondent, to confer. Respondent determined that there was insufficient evidence of exigency or foul play to justify taking down the door and told the officers to mark the job 90 Yellow, or unnecessary. (Tr. 11-17, 21-24, 47-49; Dept. Ex. 1A)

At approximately 2045 hours on October 17, 2013, Wingate and Huh responded to a second wellness check radio run for Person B. For a second time, the officers talked

to



Person A in addition to his wife and another tenant described as a male Hispanic in his forties. The tenants again expressed concern for Pers. B's wellbeing because they had not seen or heard from him for an additional week. Pers. A explained that he had even placed a cardboard in the doorjamb to test whether anyone had entered or exited the apartment but the cardboard had not been moved all week. He wanted to go into the apartment to check on [REDACTED]. The officers repeated the same investigatory steps they had taken the week

before but still could not gain access. (Tr. 17-20; Dept. Ex. 1A)

After exhausting the options they could take on their own, they called the patrol supervisor, Respondent. Respondent responded to the scene. She was reminded that this was the same wellness check they had responded to the week before. Respondent talked to the officers, reviewed the information they had obtained, checked the door and smelled for odors. Respondent also went outside to see whether there were any lights on in the apartment. She concluded that they still did not have enough evidence to justify taking down the door and told the officers to mark the job 90 Yellow - unnecessary. A week later Person A called the FDNY and Person B was found dead in his apartment. (Tr.

17-20, 49-52, 54, 59, 61; Dept. Ex. 1A)

At issue here is whether Respondent failed to provide police assistance after responding as the patrol supervisor to the second wellness check of an elderly male. Although this is a close case, for the reasons set forth below, this tribunal finds that Respondent engaged in sanctionable misconduct.

In assessing whether Respondent engaged in misconduct, it is important to note that not every mistake or error in judgment is sanctionable as misconduct. A finding of misconduct requires some demonstration of willful, intentional or negligent conduct on



an employee's part. *See Ryan v. New York State Liquor Auth.*, 273 A.D. 576, 79 N.Y.S.2d 827 (3d Dep't 1948) Mere errors of judgment, that are not unreasonable, are generally insufficient for a finding of misconduct. Accordingly, the standard of review is to compare Respondent's conduct to that of a reasonable patrol supervisor under similar circumstances. Respondent's conduct did not meet this standard.

Respondent testified that when she arrived at Person B apartment, she took the steps outlined above and reviewed the pertinent information provided by her police officers. In her estimation, they had appropriately conducted the "same investigation" and were confronting the "exact [same] situation." She concluded that there was no indication of a "real emergency going on." Person B had no family in the area and could have gone to the hospital or to China without notifying his neighbors. Respondent added that her practice was not to reinvestigate cases and that she did not follow-up because these are good police officers and she "believes in her cops." Accordingly, she found no justification to take down the door. (Tr. 49-51, 58-63)

Respondent's failure to take down the door, however, was not reasonable under the circumstances. It is important to note that contrary to Respondent's assertion, the officers were not confronting the "exact" circumstance they observed a week before. The very fact that seven additional days had gone by without Person B making an appearance is critical. His neighbors were so worried about him that they even put cardboard in the doorjamb to ascertain whether there was any activity in and out of the apartment. Having no evidence that Person B had made an appearance, they called 911 a second time for assistance. IAB Investigator, Sergeant Steven Maddrey, testified at the hearing that there were additional factors that should have reasonably led to the decision to take down the



door. According to Maddrey's investigation, Person B was not only an elderly man who lived alone, he was also sick, could not get around well, and had no relatives in the area. (Tr. 30-31, 34, 41, 44) Moreover, Respondent's officers both recognized that there was significant urgency in this second call which was made by the same concerned neighbors. In fact, the officers were not only conducting an investigation, they were trying to gain access to the apartment by looking for a copy of the key. On October 17, both Officer Wingate and Officer Huh understood that the circumstances had changed. Having been unsuccessful in obtaining a key, they both recommended to Respondent that the door be taken down. (Tr. 20; Dept. Ex. 1A) Respondent's failure to do so constitutes misconduct.

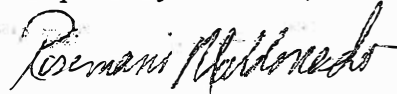
#### PENALTY

The Department Advocate recommends a penalty of 15 vacation days. In order to determine an appropriate penalty, Respondent's service record was examined. See *Matter of Pell v. Board of Education*, 34 NY 2d 222 (1974). Information from her personnel record that was considered in making this penalty recommendation is contained in an attached confidential memorandum.

Respondent was appointed to the Department on September 29, 2000 and has a disciplinary record. In 2012, she received Charges and Specifications for failing to timely report a domestic verbal dispute involving a member of the service, and for providing misleading statements to a supervisor when questioned about her relationship with a member of the service. In 2013, she received Charges and Specifications for failing to respond to the scene of an unusual police occurrence involving an off-duty member of the service. For these substantiated acts of misconduct, she forfeited 20

vacation days. Given her disciplinary record, this tribunal agrees that the forfeiture of 15 vacation days is the appropriate penalty.

Respectfully submitted,



Rosemarie Maldonado  
Deputy Commissioner of Trials

**APPROVED**

FEB 13 2015  
  
WILLIAM J. BRATTON  
POLICE COMMISSIONER

POLICE DEPARTMENT  
CITY OF NEW YORK

From: Deputy Commissioner Trials  
To: Police Commissioner  
Subject: CONFIDENTIAL MEMORANDUM  
SERGEANT MICHELLE PACHECO  
TAX REGISTRY NO. 927311  
DISCIPLINARY CASE NO. 2014-11418

Respondent was appointed to the Department on September 29, 2000. Her last three annual evaluations were as follows: she received an overall rating of 3.5 "Highly Competent/Competent" in 2014, 2013 and in 2012. [REDACTED]  
[REDACTED]  
[REDACTED]

On May 7, 2014, she was placed on Level II Disciplinary Monitoring as a result of this case. In 2012, she received Charges and Specifications for failing to timely report a domestic verbal dispute involving a member of the service, and for providing misleading statements to a supervisor when questioned about her relationship with a member of the service. In 2013, she received Charges and Specifications for failing to respond to the scene of an unusual police occurrence involving an off-duty member of the service. For these substantiated acts of misconduct, she forfeited 20 vacation days.

For your consideration.

Respectfully submitted,



Rosemarie Maldonado  
Deputy Commissioner of Trials